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**RECEIVED**

MAY - 6 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

May 6, 2002

via Hand Delivery

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Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
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Washington, DC 20554

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Michael J. Wilhelm  
Public Safety & Private Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Comments to Notice of Proposed Rule Making, WT Docket 02-55  
In the Matter of Improving Public Safety Communications  
in the 800 MHz Band  
Consolidating the 900 MHz Industrial/Land Transportation  
and Business Pool Channels

Dear Sirs:

We represent the telecommunication interests of Supreme Radio Communications, Inc.  
(Supreme). On behalf of Supreme, we submit its comments to the above referenced matter,

No. of Copies rec'd 0424  
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WT Docket No. 02-55. Supreme is and 800 MHz, CMRS licensees, and is also an auction winner from the first 800 MHz auction, and thus is acutely interested in the impact any Order resulting from the present proceeding may have. As its operations will be directly impacted by the outcome of the above referenced proceeding, Supreme wishes the Commission to consider its comments and the suggestions, opinions and concerns expressed therein.

To comply with the filing requirements announced in the NPRM, Supreme encloses the original copy of its comments herein, along with six copies thereof. The original comments and four copies should be delivered to William F. Caton. One copy should be provided to Qualex International, and one copy should be provided to Michael J. Wilhelm. Please feel free to contact us should there be any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Benjamin J. Aron". The signature is fluid and cursive, with a long horizontal stroke at the end.

Benjamin J. Aron

enclosure

cc: Laura Smith

BJA:cfh

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**In the Matter of** )  
)  
**Improving Public Safety Communications in the** )  
**800 MHz Band** )  
)  
**Consolidating the 900 MHz Industrial/Land** )  
**Transportation and Business Pool Channels** )

**WT Docket No. 02-55**

**COMMENTS OF SUPREME RADIO COMMUNICATIONS, INC.**

### **Summary**

Supreme Radio Communications, Inc. (Supreme) is a licensee of dozens of 800 MHz site-based channels as well as an 800 MHz EA licensee. Supreme's licenses all authorize operation in central Illinois, and it provides service to all manner of businesses as well as numerous public safety entities. The Commission's NPRM raises issues that affect Supreme's interests both as to its site based and EA licenses. Accordingly, Supreme is an uniquely interested party to these proceedings and timely submits its comments in the above captioned proceeding.

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FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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**COMMENTS OF SUPREME RADIO COMMUNICATIONS, INC.**

Supreme Radio Communications, Inc. (Supreme) is a licensee of dozens of 800 MHz site based channels as well as an 800 MHz EA licensee. Supreme's licenses all authorize operation in central Illinois, and it provides service to all manner of businesses as well as numerous public safety entities. The Commission's NPRM raises issues that affect Supreme's interests both as to its site based and EA licenses. Accordingly, Supreme is an uniquely interested party to these proceedings.

1. The Public Interest Demands the Auction of the 2 Ghz spectrum Nextel Seeks or any Spectrum traded to Nextel.

In it's White Paper, Nextel has suggested to the Commission that it provide Nextel with 10 MHz of spectrum in the 2 Ghz band in exchange for certain spectrum held by Nextel in the 700, 800 and 900 MHz bands. Supreme feels that if such spectrum is to be reassigned from its current use, the public interest demands that such spectrum be made available to Nextel, and any other interested parties, through an auction rather than being granted to Nextel in the manner outlined by Nextel in the White Paper.

The predominant reason the public interest demands the auction of the 10 MHz of spectrum in the 2 Ghz band Nextel seeks is that such an auction would likely generate a significant amount of revenue. The amount of revenue which would be generated by such a sale is likely in excess of a billion dollars, and the public should not be deprived of such revenue simply because Nextel is dissatisfied with the spectrum it won at auction. The Commission will recognize that the benefit of the revenue which would be generated by an auction of the 10 MHz of 2 Ghz spectrum far exceeds any benefit offered by Nextel's plan. According to the White Paper, Nextel is willing to pay \$500 million dollars towards the relocation expenses of the vast number of entities forced that would be forced to relocate.

It is the opinion of Supreme that the public interest would be better served by auctioning the spectrum at issue and making the monies raised by that auction available to public safety entities for such equipment upgrades as may be necessary for public safety entities to combat interference received from Nextel. Compared to the value of the spectrum Nextel seeks, the licenses it is offering and the \$500 million dollars it proposes to spend on relocation expenses pale in comparison. When the dollar value of Nextel's offer is considered, it becomes obvious that its offer is paltry in comparison to the potential revenue that would be generated by an auction.

Supreme is unaware of any recent grant of 10 Mhz of coast-to-coast contiguous spectrum that has occurred without an auction. Through its decision to grant the exclusive authority to operate on large blocks of spectrum only by conducting auctions for such exclusive rights, the Commission has recognized that it cannot promote the public interest by forgoing the large proceeds generated by

such auctions. The grant of the authority by Congress empowering the Commission to conduct auctions clearly indicates a preference that the Commission auction available spectrum.

Should the Commission place the 10 MHz of spectrum Nextel seeks up for auction, Nextel will still have the opportunity to bid on and win the right to operate on such spectrum, but it would do so in a pro-competitive fashion. The Commission has always sought to promote competition, and that is one of the primary reasons the Commission has favored auctions for large blocks of spectrum. Should another entity bid a greater sum than Nextel for 10 MHz of 2 Ghz spectrum at issue, the public would benefit by the greater dollar amount obtained from the auction, and from the incentive such a entity would have to maximize use of the spectrum so as to reap the greatest return for its investment. The principle of competition, that same reliable principle that has guided the Commission's hand in so many instances, demands that if the spectrum Nextel seeks is made available at all, it should only be made available via auction.

The same arguments apply to the public safety spectrum the Commission is proposing to clear out in order to relocate Nextel upon. This spectrum, cleared of all incumbents, would garner exceedingly high auction revenues if made available for auction. For the Commission to ignore the inherent value of this spectrum and simply hand it to Nextel is against the public interest. In essence, this spectrum would be cleared by the Commission and offered to Nextel as a solution to a problem Nextel has caused. To award Nextel a valuable benefit for having caused interference makes no logical sense, and the failure to capture revenue in return for making the spectrum available is also against the public interest. Should the Commission elect to clear the spectrum of incumbent public



safety users and offer it to Nextel, that offer should be conditioned upon Nextel paying, either up front or over time, an amount equal to the fairly estimated value of that spectrum. Nextel's payments could be used to fund relocation expenses, and any amount left over could be applied to such other purposes as are prudent.

2. The Moniker "CMRS - Public Safety Interference" a Misnomer.

A term misused throughout the "White Paper" is "CMRS-Public Safety Interference." This term is at best a gross mischaracterization of the nature and cause of the interference discussed by Nextel in its White Paper, and at worst, an attempt to lay blame for interference caused almost exclusively by Nextel at the feet of all CMRS operators. In reality, this interference should be labeled "Nextel-Public Safety Interference" because Nextel alone, or in conjunction with a small number of other operators, is the source of this interference.

The vast majority of CMRS operators run their systems in close proximity, often from the same towers as public safety entities, and typically cause little or no interference problems. Nextel can make no such claim. In fact, many 800 MHz licensees have been operating their systems alongside public safety entities for over 20 years or more with nary a complaint. Many of these licensees have licenses that preexist the Commission's designation of CMRS operation. These licensees were the very back-bone of this great nation's dispatch communications systems prior to cellular systems being conceived. Bus systems, taxi cab fleets, ambulance services, county and state works crews, crossing guards, sanitation fleets, and the like have been operating on the dispatch

systems of the licensees Nextel now seeks to displace for decades and such operations have rarely interfered with public safety operations.

As the vast majority of 800 MHz licensees held their licenses prior to the grant of any licenses to Nextel, and as those licensees rarely did or do cause interference to Public Safety entities, Nextel must be viewed as the source of all interference problems. Thus, the moniker “CMRS-Public Safety” is wholly inaccurate, misleading and disingenuous.

Following its victory in the 800 MHz auction, Nextel has acted like the proverbial bull in a china shop. As it built out its system, both on its auction channels and on those channels comprising its wide-area authorization, it shattered the reliability and integrity of operation that had so long been enjoyed by the public safety community in the 800 Mhz band. Nextel was aware when it acquired its 800 MHz licenses that the 800 MHz band was heavily encumbered with public safety and industrial licensees. Nextel’s decision to proceed with the auction despite the wide-spread presence of vital public safety licensees was a decision it made of its own accord. Further, when Nextel opted to build a multi-channel, cellularized, low-site system, Nextel created much of the problem of which it now complains.

Upon taking title to its licenses, Nextel implicitly agreed to operate each of them in such a manner so as not to interfere with the pre-existing licensees, the presence of which it was abundantly aware. Bearing this in mind, it seems absurd that Nextel is seeking the assistance from the Commission discussed in the White Paper and shirking its duty to operate without interfering with

other licensees. Nextel states that it is operating within the parameters of the licenses it was issued, but that argument misses the spirit, if not the letter of the Commission's rules entirely. No entity is entitled to cause interference to an other licensee.

The Commission's grant of a license is not tantamount to a grant of the right to abuse surrounding licensees. Nextel discusses the interference problem it has created as if there were some grand mystery involved, but the answers to this problem is found no further than in the Commission's own rules. Section 90.173(a) requires licensees to rectify interference problems once they are identified. Section 90.173(b) states:

All applicants and licensees shall cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements . . . Further, the use of any frequency may be denied when, in the judgement of the Commission, its use in that location is not in the public interest  
...

In the judgement of Supreme, the Commission should order Nextel to move immediately turn off its equipment at any site regarding which Nextel receives an interference complaint. Supreme deems it likely that Nextel will find a way to avoid interfering with Public Safety and other analogue 800 MHz licensees if it is given the proper motivation.

Despite Nextel's constant assertions that it is operating within the bounds of its licenses, such operation does not relieve a licensee from the obligation to prevent interference to other licensees' systems. The Commission, in fact, has the power, under Section 90.173(b), to modify licensees'

authorizations in instances where interference is pervasive and a modification of an authorization will both solve the problem and promote the public interest. Such an approach might be called for here. To rectify Nextel-Public Safety interference, the Commission should order Nextel to immediately reduce the effective radiated power of all its transmitting equipment to such a level that Nextel no longer causes interference to any Public Safety entity. The same approach should be taken regarding interference complaints from an analogue 800 MHz licensee.

3. Nextel's Offer to Pay \$500 Million Dollars Towards the Relocation Costs of Entities Forced To Relocate Does Not Address the Overall Cost of Such Relocation, Nor Does it Address Expenses over the \$500 Million Sum.

Nextel would have the Commission believe that it is “generously” offering to pay \$500 million dollars towards the relocation expenses of forced to relocate under the plan described in the White Paper. Supreme believes this sum is a gross underestimation of the expense of relocation and fails to address what monies, if any, would be available to public safety entities in the event of a short-fall. Nextel has presented no calculation, estimated or otherwise, of the amount of money necessary to move those incumbent licensees required to move under the plan announced in its White Paper. With no figures to show what the total estimated expense would be, it is more difficult to attribute the monetary aspect of Nextel's offer to generosity than to a reckless indifference towards the greater 800 MHz community of licensees.

Under the plan espoused by Nextel, the money for relocation would allegedly be made available by Nextel, other cellular operators, and other CMRS operators. Supreme is entirely unclear

why any entity or group of entities should be asked to contribute to the relocation fund for Public Safety entities when the interference experienced by Public Safety entities is caused exclusively by Nextel and A and B cellular operators. Other than interference caused by Nextel, other non-Public Safety licensees in the 800 MHz band cause each other little or no interference. This is true of both the CMRS and PMRS licensees. Thus, other than Nextel's self-serving desire to shift the burden of the proposed relocation off its own shoulders and onto the shoulders of other entities who are largely blameless in the creation of interference to public safety entities, there is no rational explanation of why any entities other than Nextel and A and B cellular operators should contribute to relocation expenses.

Predictably, Nextel offers no description whatsoever of how the relocation expenses of affected entities would be paid. It is one thing to offer to make \$500 million dollars available to cover expenses, it is another matter entirely to suggest a workable plan by which this money could be distributed to those entities needing those funds. The dearth of any explanation regarding the mechanism for payment of expenses is troubling. Perhaps Nextel would like the Commission to play the part of the banker in this matter. Nextel has also given no guidance on how the \$500 million dollars will be made available and whether the money will be used to reimburse relocating entities or to fund such relocations in advance.

It may surprise Nextel to discover that many, if not all, public safety entities lack the financial where-with-all to fund a relocation with their existing resources. The vast majority of public safety entities would need to have their relocation funded in advance and conducted by a reputable

independent contractor. In all instances, the relocation would require the build-out of a fully functional parallel system to provide a seamless transition to the new system. It seems unlikely that the entire nation's public safety community could be relocated for \$500 million dollars in the 36 month time table suggested by Nextel. In fact neither the dollar figure nor the time frame seem feasible or realistic whether viewed individually or in combination.

Nextel offers no guidance on what will be done if there is a shortfall in the funds allocated for relocation expenses, and that potentiality gives rise to many questions. What fate would befall public safety entities whose relocation expenses exceed the relocation amount allotted to them? Should the difference be funded by taxpayers in order for Nextel to be granted spectrum upon which it can more easily operate its system? What repercussions would there be for public safety entities that cannot relocate within the time frame Nextel suggests? Should those entities be forced to suffer any and all interference because they were unable to timely relocate to the new spectrum? These and a host of similar questions must be addressed prior to any plan being adopted. Supreme believes that there are more questions than answers, and no relocation plan can be suggested that will adequately ensure the continuous provision of public safety communications.

4. Nextel Interference to Co-Channel and Adjacent Channel Licensees Adversely Affects CMRS and PMRS Non-Public Safety Licensees.

Nextel's White Paper discusses at length interference caused to public safety licensees, but nowhere discusses interference that Nextel causes to other CMRS operators. This interference is

well documented, and Nextel has expended minimal or no effort to resolve these interference problems. Nextel has often neglected to even respond to interference complaints registered by co-channel or adjacent channel licensees.

It is important to note that the interference caused to other CMRS operators often impacts Public Safety entities as well. This is true both because 800 MHz CMRS dispatch systems often provide service to public safety entities. 800 MHz PMRS licensees also often provide service to public safety entities on a cost-shared, not for profit basis. The availability of such service is often vital to the effective operation of public safety entities. Some public safety and public service entities rely exclusively on CMRS dispatch systems for their communications needs. Across the country the safety of children on buses, the timely operation of commuter bus services, the orderly operation of taxi fleets, and the coordinated operation of small businesses such as locksmiths, plumbers, electricians, builder, and the like are dependent on CMRS dispatch services. Nextel's intransigence in resolving interference complaints has created problems for CMRS operators and the businesses they serve.

Nextel's reaction to interference complaints voiced by co-channel and adjacent channel licensees has typically been no reaction at all. Most often, CMRS operators seeking Nextel's assistance in responding to an interference complaint are forwarded to various departments within Nextel's corporate infrastructure before finally being told that no action will be taken. An example of just such a scenario is found in the Commission's decision released on July 21, 2000 in response

to a Motion to Set Aside and Correct the Commission's Records filed by Wiztronics. In the above referenced matter, the licensee, Wiztronics, brought an action against Nextel for improper operation. Amongst the evidence provided to the Commission was a letter sent to Nextel by which the aggrieved licensee sought to have Nextel redress the interference its secondary site was causing to Wiztronics' primary site. Rather than respond to the licensee and attempt to resolve the situation, Nextel both denied that it was causing any interference and refused to either investigate the situation or take any steps towards a favorable resolution. The Commission, after reviewing the evidence placed before it, took the appropriate action: it cancelled Nextel's license.

The Commission's decision is notable because it not only establishes that Nextel's habitual refusal to cooperate is commonplace, but it provides the Commission with precedent to guide it in establishing the appropriate course of conduct to resolve the interference problems Nextel has created. The Commission can immediately solve the interference problems Nextel is causing the entire 800 MHz community by finding that Nextel is flaunting the both Commission's rules and Nextel's obligations thereunder by ordering Nextel to either bring an immediate end to the interference problems it is causing or to surrender those licenses upon which Nextel's operations cause interference to other licensees.

Nextel has only the right to operate in a manner consistent with the heavily encumbered 800 MHz landscape, not the right to trample on all incumbent licensees like so many blades of grass. Nextel's suggested approach to rectifying the interference problems it alone has created is for the Commission to "find" spectrum on which Nextel can operate with unfettered freedom. The



Commission should take no such action as it would simply relieve Nextel of the joint obligation to avoid interference that all licensees are under, and would do so at the expense of the American public which would be deprived of billions of dollars of potential auction revenue. There is ample reason to believe that providing Nextel with new spectrum will simply create a new set of aggrieved licensees on either adjacent channels or co-channels. Providing Nextel with new spectrum would be tantamount to rewarding Nextel for its actions in contravention of the Commission rules. Such a result would not only confound the public interest, but would embolden Nextel to continue its practices unchanged, and would fly in the face of justice, the Commission's rules and common sense.

5. Nextel Does Not Have a Coast-to-Coast License or Licenses to Offer.

The spectrum upon which Nextel seeks to have the Commission authorize it to operate upon is a coast-to-coast channel block. The Commission's and Nextel's proposed plans calls for the channels to be cleared of incumbent operators following the Commission's ordering all incumbent operators to move to other spectrum. The same holds true for any suggested re-banding plan designed to clear the public safety channels located between 866 MHz and 869 MHz. While Nextel requests coast-to-coast unencumbered channels, Nextel cannot offer the Commission the same in return. Nextel's holdings, those it intends to "swap" with the Commission, amount to a mixture of area licenses and EA licenses spread throughout several different bands of spectrum. In no single band of the spectrum Nextel offers to "swap" with the Commission does Nextel have coast-to-coast unencumbered spectrum. Should the Commission choose to accept Nextel's proposal, it will receive in return a mix of spectrum in the 700, 800 and 900 MHz bands that is encumbered, non-contiguous,

and ill suited for the relocation Nexel proposes. The Commission might also note that Nextel has not extensively constructed on any band other than 800 MHz, and thus, a waiver of the Commission's rules would be required for any assignment of 700 MHz or 900 MHz frequencies as the Commission's rules do not permit the assignment of unconstructed licenses.

The channel blocks Nextel proposes to trade to the Commission have more holes than a rusty tin can target. For instance, Nextel holds an incumbent 900 MHz license (CALL SIGN) authorizing it to operate in the Dallas-Fort Worth metropolitan area, however, Nextel does not possess the EA license that authorizes operation in the rest of the Dallas EA. Similar gaps in Nextel's spectrum holdings exist across the country and it should surprise no one that Nextel seeks to trade its patchwork holdings for a contiguous block of unencumbered channels.

In the 800 MHz band, Nextel has little of value to offer the Commission in return for the spectrum it requests. Although Nextel holds most, but not all of the EA licenses for the channel blocks between 861 and 865 MHz, it does not come close to holding all the EA licenses for the channel blocks between 851 and 860 MHz. Neither do Nextel's site-based licenses authorize operation on sufficient spectrum or offer sufficient geographic area coverage for Nextel to realistically deliver coast-to-coast relocation spectrum. It is not Nextel that is selling the magic beans in the form of the suggestions it offers in the White Paper, but it is Nextel that is seeking to buy them.

6. Channel Scarcity in Border Regions Completely Ignored.

The White Paper fails to address the issue of channel scarcity in border regions. The Commission's rules for operation in regions bordering Canada and Mexico authorize operation on far fewer channels than are authorized for the rest of 48 contiguous states. The impact that channel scarcity has on the efficacy of Nextel's plan, or whether it has considered channel scarcity, is an issue not addressed in the White Paper. As there are already a limited number of channels available for Industrial/Business and Industrial/Land Transportation licensees, Nextel's plan would either make it impossible for these entities to relocate to new channels within the 700, 800 or 900 Mhz bands, or would make such relocation extremely difficult due to the small amount of channels available.

The option of remaining as a secondary status licensee is of course no solution at all. Under this proposal, analogue operators that have not contributed or caused interference to Public Safety entities would be forced to become secondary status licensees in order for the entity that caused the interference to migrate to clean channels. The inherent inequity in such a suggestion is galling. Channel scarcity in the border regions would likely prevent many Industrial Business and Land/Transportation licensees from finding suitable alternative frequencies on which to relocate and they would thus be forced to remain as secondary status licensees. The presence of such licensees in large concentrations either co-channel or adjacent channel to public safety entities is an inherently flawed proposal. Trading interference with Nextel for potential interference from Industrial licensees forced onto a more limited number of channels and redesignated for secondary status is a solution for Nextel alone as it simply shifts the onus to avoid interference from Nextel at the expense of other licensees.

The Commission should also carefully note that the band-width Nextel proposes to exchange in the border regions pales in comparison to the channels capacity it would receive. There are fewer restrictions on available 2 Ghz spectrum in the border regions, while the restrictions on available 800 and 900 MHz spectrum in the border regions are significant. In these regions, Nextel would run out of fingers and toes on which to count the extent of its wind-fall, while those operators seeking to continue operating in the 800 and 900 MHz bands would need more than a simple helping hand to effectively operate their systems.

7. Second/Dual Relocation is a Major Issues for Small Businesses.

Small Businesses would suffer a terrible blow should the Commission adopt Nextel's plan or any plan not specifically tailored to prevent injury to them. Following the auction of the 800 MHz upper 200 channels to Nextel, the Commission's rules allowed Nextel to relocate incumbent licensees to comparable spectrum. The relocations conducted by Nextel, for the most part, involved relocation of incumbents to comparable channels between 851 and 860 MHz. This relocation was a substantial inconvenience to all relocated operators. Each of these relocated licensees was forced to reprogram all its equipment, including mobile units in the possession of end-users. Each of these relocated licensees was promised by the Commission that no subsequent relocation would occur.

From a business standpoint, end-users must be assumed to have a maximum tolerance point regarding continuous relocation. Insofar as that must be the case, such end-users at some point will switch service providers rather than undergo another relocation. This potential loss of customer

revenue to the small businesses that operate on the 800 MHz band must be considered. While Nextel will gain spectrum in under its proposal, other operators stand to lose spectrum, credibility and customers. While Nextel offers money for the relocation of Public Safety entities, it does not offer any solution for the impact of its suggestion on small businesses.

The Commission, by Congressional edict, must consider the impact of its decisions on small businesses, and thus, Supreme urges the Commission to look long and hard at this issue before making any decision in this matter. Any inquiry into the impact on small businesses will find that most small businesses cannot afford to pay for their own relocation, and many will lose their credibility if forced to relocate again. The Commission must consider the feasibility of any potential decision in this matter not only in terms of Nextel and the Public Safety community, but in terms of the impact on small businesses as well.

Even should the Commission devise a plan under which all the expenses involved in the relocation of small businesses are paid out of some funding mechanism, the Commission must inquire into other impacts such a relocation would have on the small businesses. In its inquiry into this matter the Commission might find that such a relocation would drive off the customer base of small businesses; the Commission might find that small businesses will be priced out of the market due the differential between operating their systems in the 800 MHz band and in the 700 and 900 MHz bands to which Nextel proposes to exile small businesses; the Commission may find that the expertise small business operators have in the equipment used in 800 MHz systems does not

translate into the other bands to which Nextel proposes to banish small businesses, and this net loss would be a terrible hurdle for small businesses to overcome; and the Commission may find that small businesses may lose credibility regarding their ability to provide reliable service after being forced to again relocate to new spectrum. These potential impacts and others must be considered by the Commission before it reaches any decision on the issues Nextel has placed before it, and Supreme is sure that the Commission's conclusions on the potential impact of each such issue will lead it to conclude that the plan suggested by Nextel would mean doom for small businesses.

8. Nextel has Already Won Spectrum in the 700 MHz Auction and it Should Use This Spectrum.

In the recent 700 MHz auction, Nextel won numerous licenses. The rules for operation on the spectrum won in the 700 MHz auction dictate that the auction winner is entitled to operate on 49% of the spectrum, and must make 51% of the spectrum won available to other licensees. Supreme does not believe Nextel has begun operating on the 700 MHz spectrum it won at auction, and thus is requesting the Commission's assistance in remedying a problem prior to Nextel's availing itself of those solutions to the alleged problem that are within Nextel's control. Nextel's holdings in the 700 MHz band can be used by Nextel to build out its system in the same manner it is suggesting it would build its system out by obtaining the 2 Ghz spectrum it seeks. If it is not able to do so, it certainly owes an explanation to the Commission of why the 700 MHz spectrum on which Nextel is licensed is of little or no utility to Nextel. Supreme believes that any answer Nextel offers the Commission to such a question would reveal that the spectrum Nextel is offering to swap with the Commission has a far lesser value than the spectrum Nextel is seeking from the

Commission.

An issue the Commission should request a response from Nextel on is how Nextel feels it is executing its duty as a Band Manager by asking the Commission for a swap of frequencies involving all the 700 MHz spectrum on which Nextel serves as a Band Manager? In the 700 MHz auction, the Commission employed a unique solution to achieving maximization of frequency use in the public interest. This solution was to require auction winners to serve as Band Managers as well as licensees. In this regard, auction winners are only allowed to use 49% of the spectrum authorized under a license for itself, and is to function as a Band Manager for the other 51% of the spectrum. Band Managers are required to offer the lion's share of the available spectrum to interested parties for their use, to function as a coordinating agency for the orderly parceling of the spectrum, and to serve as a governing institution for the resolution of interference complaints.

Those entities that won the auction were both awarded a license and saddled with a duty to represent the public interest. The 700 MHz license awarded at auction are in essence a 'public trust' with the auction winner. The auction winners are beholden to the citizens of this great nation to faithfully execute the fiduciary duties of a public trustee. When it won its license at auction, Nextel entered into an agreement with not only the Commission, but with the citizens of this nation to act as a fiduciary in relation to a piece of property belonging to the United States of America in the form of spectrum. It appears that Nextel's first act as a fiduciary to America's citizens is to shirk its responsibility entirely. Nextel has not taken any visible steps to faithfully execute its duties as a

fiduciary/Band Manager, but instead has apparently spent its time abusing the public trust it undertook by merging its 700 MHz auction licenses with its private corporate interests to present the Commission with a plan which benefits Nextel at the expense of many and to the convenience of none.

Perhaps Nextel should explain to the Commission not only why its inclusion of its 700 MHz auction licenses in its relocation plan does not violate the public trust, but how its participation in the auction, in view of its subsequent actions did not taint that auction and do a disservice to those other parties that legitimately desired to win the auction licenses to faithfully serve as a Band Manager? Other auction participants may have been able to acquire their licenses at substantially reduced prices had they not been required to contend with bids placed by a party seeking only to acquire licenses as trading stock. While there may be a benefit to the public in the form of the highest possible auction prices, the participation in the auction of a party which intends to use its licenses as trading stock does lead to economic waste, and thereby drains valuable resources away from the market. Economic waste is never in the public interest and it would seem that Nextel's participation in the auction, in light of its recent actions, led to just such a result.

### Conclusion

The above recommendations are presented with the hope that they may help guide the Commission to issue the most equitable possible order in this matter. The problems confronting 800 MHz licensees are daunting for all parties, but the Commission should remember that the source of the problems is Nextel and a limited number of other similarly situated licensees. Any solution to

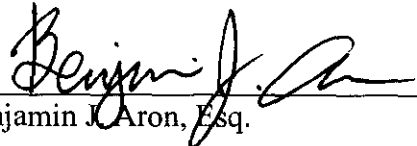


the Public Safety communication interference problems should be a burden only on those parties causing the problems, not to innocent licensees or the American public.

Respectfully submitted,

Supreme Radio Communications, Inc.

Dated: May 6, 2002

By:   
Benjamin J. Aron, Esq.

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